

LINDA GOODBROD,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NOS. 00-20,747 & 00-20,805
	:	
ALLEN GOODBROD,	:	
	:	
Defendant	:	EXCEPTIONS

***Date: December 19, 2000***

**OPINION and ORDER**

Before the Court are the exceptions of each party to the Family Court Hearing Officer's Order of October 5, 2000 ordering child support for one child to the mother/wife, Linda Goodbrod, in the amount of \$756.75 per month and denying father/husband, Allen Goodbrod's request for an award of alimony pendent lite.<sup>1</sup> The Exceptions of Allen Goodbrod and cross-exceptions of Linda Goodbrod both object to the manner in which the Family Court Hearing Officer determined Mr. Goodbrod's inheritance from his mother's estate was to be included in the calculations which determines the monthly child support and alimony payments.

**Facts**

The material facts of this case are undisputed and are set forth in the Family Court Hearing Officer's decision of October 5, 2000.<sup>2</sup> The Goodbrods were married and are the parents of two

---

<sup>1</sup> Linda Goodbrod filed a complaint for child support on May 18, 2000. Allen Goodbrod filed for divorce on May 16, 2000. On June 12, 2000 he amended his complaint to include a claim for alimony pendent lite. The Family Court Hearing Officer held a hearing and issued an Order on October 5, 2000. Allen Goodbrod filed Exceptions on October 23, 2000. Linda Goodbrod filed Cross-Exceptions on October 26, 2000. Neither party requested transcripts of the proceedings. Arguments were heard before this Court on November 22, 2000. Neither party has filed briefs.

<sup>2</sup> Since neither party requested a transcript of the proceedings before the Family Court Hearing Officer, this Court must accept the factual findings in the Orders.

children, Heather born January 5, 1977 and Keri born on October 10, 1984. As of October 5, 2000, Linda Goodbrod was employed as an operator at AT&T earning a net monthly income of \$2,787.82. The YMCA employed Allen Goodbrod. His net monthly income is \$1,873.65. In May 1999, Allen Goodbrod received an inheritance of \$122,000.00 in cash from his mother's estate. Mr. Goodbrod used a portion of the money to pay his eldest daughter's college tuition of \$9,000. He also used \$18,000 of the money to pay taxes.

In addition to the cash inheritance, Mr. Goodbrod is entitled to receive his mother's home. This realty, however, has not yet been distributed to him but is being held by the estate. The estate is trying to sell the property at an \$80,000 asking price.

In May 2000, the parties separated. On May 18, 2000 Mrs. Goodbrod petitioned the Court for child support. On June 12, 2000, Mr. Goodbrod filed a motion for alimony pendente lite. After a July 25, 2000 hearing, on October 5, 2000 the Family Court Hearing Officer ordered Mr. Goodbrod to make a monthly child support payments in the amount of \$756.75 to Mrs. Goodbrod effective May 18, 2000. In determining the amount of child support, the Family Court Hearing Officer included Mr. Goodbrod's receiving cash inheritance, but excluded the value of his mother's home.<sup>3</sup> The Family Court Hearing Officer also denied Mr. Goodbrod's request for alimony.

---

<sup>3</sup> Specifically, the Family Court Hearing Officer amortized the remaining cash from the inheritance over a 37 month period. 37 months was chosen because it was the period of time from the original filing of the child support petition until the youngest daughter's age of majority. The Hearing Officer refused, however, to include the amount attributable to the expected inheritance as the realty is still being held by Allen Goodbrod mother's estate. Mr. Goodbrod's net monthly income as calculated to be \$4,454.99 by adding \$2,581.34 attributable to the amortized inheritance to his monthly net income from employment. This \$2,581.34 was arrived at by subtracting the amount Mr. Goodbrod paid in taxes and tuition – approximately \$27,000- from the \$122,000 inheritance. This left a balance of \$95,509.46. This amount

### Discussion

The major legal issue presented by this case is whether or not Mr. Goodbrod's inheritance should be included in his income for child support and alimony calculations. According to Mrs. Goodbrod's understanding of *Humphreys*, the answer is yes. Mr. Goodbrod counters that the *Humphreys*' decision does not control his case. In its October 5, 2000 Order, the Family Court Hearing Officer explicitly stated that she relied on the *Humphreys*<sup>4</sup> case as being the controlling decision. For the reasons to be discussed herein, this Court agrees that the inheritance cannot be included in Mr. Goodbrod's income for child support or alimony calculations.

### Child Support Income

It is not disputed that an inheritance is income for child support cases. 23 Pa.C.S.A. §4302 gives a list of some of the common sources of income. Though an inheritance is not specifically listed, the definition of income concludes by stating that "any form of payment due to and collectible by an individual regardless of source" constitutes income. Amounts of support are to be calculated in accordance with the guidelines set forth in 23 Pa.C.S.A. §4322. Though the statute is silent concerning precisely when the support obligation arises, subsequent decisions have stated that income is to be "determined as of the time support payments are sought." *Com. ex rel. Vona v. Stickley*, 430 A.2d 293 (Pa. Super. 1981). In effect, the act of filing for child support becomes the triggering event. Once the support is sought, the parents' income is determined as of that particular point in time forward until the

---

was then divided by 37. The resulting \$756.75 per month child payment until June 2003, was then determined by applying the guidelines to Mrs. Goodbrod's net income of \$2,787.82 and Mr. Goodbrod's \$4,454.99.

<sup>4</sup> *Humphreys v. DeRoss*, 737 A.2d 775 (Pa. Super 1999).

child's majority. Any income, including, as in *Humphreys*, inheritances, should be calculated into the amount of the payments if that money is realized after the support is sought.

Mr. Goodbrod correctly argues that *Humphreys* does not control this case. In *Humphreys*, the Appellant received his inheritance after child support had been sought. Several days after receiving the inheritance, the Appellee filed a petition for modification of the *existing* support order. In the present case, Mr. Goodbrod had received his inheritance in the year prior to the couple's separation. Had Mr. Goodbrod received the inheritance after the May 16, 2000 child support petition was filed, then *Humphreys* would seem to dictate its inclusion in the support calculations.<sup>5</sup>

In holding that the inheritance should not be included because it was realized prior the filing for child support, this Court is in accordance with the decision reached *Miller v. Miller*, No. 97-20,896, Lycoming County Court of Common Pleas. In *Miller*, our colleague the Honorable Dudley N. Anderson, who has distinguished himself in the area of family law, agreed with the Respondent that the proceeds from the sale of a business should not be considered income because the business was sold approximately eighteen (18) months prior to Petitioner's request to reopen the support obligation. Judge Anderson concluded that the proceeds could not be considered income because there was no support obligation in effect at the time of the sale.

In support of her argument that the inheritance should be included in the child support payments, Mrs. Goodbrod points to a Missouri decision, *Taranto v. State of Missouri*, 962 S.W. 2d

---

<sup>5</sup> This Court notes that the Supreme Court of Pennsylvania has granted a Petition for the Allowance of Appeal and has directed the parties to address several issues. The first issue listed is whether or not an inheritance should be included in the definition of income under 23 Pa.C.S.A. § 4302. See 759 A.2d 371.

897. In *Taranto*, Respondent argued that the Circuit Court of Platte County erred when it included payments under a personal injury settlement as income for child support purposes. Respondent contended that because the settlement was not income for determining federal tax liability, it should also not be income for child support purposes. The Court of Appeals disagreed and noted that Missouri's definition is broader than the federal government's and specifically includes annuities as income. This decision of the Missouri Court of Appeals, is not persuasive authority, however, because a close reading of the case reveals that it concerns issues that are not directly relevant to this case. In *Taranto*, Obligor had received \$10,000 per year as part of a settlement from a childhood injury beginning when he turned eighteen, and received payments until he turned twenty-one. It appears the *Taranto* case presumed the Obligor was receiving these payments when his child support obligation arose. The *Taranto* case is similar to *Humphrey* because they both address the issue of what should be included in the definition of income. The case at hand, rather, is an issue of timing; i.e. what was obligor's income when the child support obligation arose.

Mrs. Goodbrod also contends that the house Mr. Goodbrod expects to acquire from his mother's estate should be considered as income. Presently the property is being offered for sale at \$80,000 and has been on the market for several months. Mrs. Goodbrod argues that the \$80,000 should be factored into the monthly support payment calculations. This Court disagrees. It is well settled that expectancy is not income. An expectancy is simply too tentative a proposition on which to base a concrete claim. There was no testimony offered to indicate that Mr. Goodbrod or the estate was not

acting in good faith in trying to sell the property. Eventually the money realized by Mr. Goodbrod will probably become of benefit to the child.

This Court having found that the cash remaining in Mr. Goodbrod's possession from the inheritance should not be included in his net monthly income for child support purposes, however, does not mean that the benefit he has from this amount of money, which is being held in a savings account, should not be utilized in some manner for child support purposes. At the very least, the income in the way of interest from this amount (or if it is in a non-interest bearing account then the amount of income that might normally be derived from interest or investing of this money) should be added to his income from employment to calculate his net monthly income. Although Mr. Goodbrod has expended almost 25% of his initial cash inheritance, the Court believes (as the Family Court Hearing Officer found) that his expenditures of these amounts were for legitimate debts and obligations. There is no finding that the expenditures were made with the intent of keeping money from being utilized for child support purposes. It is appropriate to conclude that the income that can be derived from the balance now held of \$95,000 for child support purposes.

The availability of Mr. Goodbrod's cash on hand, compared with his other financial obligations, his age, his need to maintain this amount for future retirement or other legitimate personal reasons, may also mean that some or all of the \$95,000 might appropriately be considered as another asset available for payment of support in accordance with Pa.R.C.P. 1910.16-5, which governs deviations from support guideline amounts.

Since the Family Court Hearing Officer's decision did not address the issue as to the amount of interest income that can be derived from the \$95,000, or the factors which may affect an appropriate deviation under Rule 1910.16-5, it now becomes necessary to remand this case to the Family Court Hearing Officer in order to take testimony to determine an appropriate net monthly income for Mr. Goodbrod based upon these additional considerations.

**Alimony Pendente Lite**

The final issue to be considered is Mr. Goodbrod's request that he be awarded alimony pendente lite. The Family Court Hearing Officer having found Mr. Goodbrod's net monthly income to be \$4,454.99 (his monthly income of \$1873.65 augmented by \$2,581.34 attributed to the amortized inheritance, *see* footnote 3) also determined Mrs. Goodbrod, with an income of \$2787.82 net monthly, was not required to alimony pendente lite. Even though Mr. Goodbrod's income as found in this Opinion is now reduced by removing the inheritance to approximately \$1,000 less per month than Mrs. Goodbrod, she argues that an award of alimony pendente lite would be unjust and be tantamount to penalizing her simply because she has a higher paying job. According to 23 Pa.C.S.A. § 3702, alimony pendente lite is to be awarded when the dissolution of the marriage puts one party at such a financial disadvantage that a continuation of the divorce proceedings is jeopardized. According to the October 5, 2000 Order, Mr. Goodbrod was earning approximately \$1,873.65 per month, while Mrs. Goodbrod was earning \$2,787.82 per month. This disparity would seemingly support an award of alimony pendente lite. Disparity in income, however, is only one factor in considering awarding alimony pendente lite. The disparity in income of the parties must be reviewed in relation to the other facts of a particular case in

determining whether to award alimony pendente lite. *Jayne v. Jayne*, 663 A.2d 169, 176-77 (Pa.Super. 1995). In this case, although it is indisputable that Mrs. Goodbrod earns more, this Court finds the income disparity of these parties is not the final arbiter of alimony pendent lite. Interestingly, unlike income for tax or child support reasons, 23 Pa.C.S.A. §3701(b)(4) specifically provides that the expectancies and inheritances of the parties can be taken into consideration in awarding alimony. Since Mr. Goodbrod is presently employed, still has substantial wealth from his cash inheritance, and stands to acquire an additional gain from the substantial inheritance from the estate's unsold property, the Court does not find it necessary to award him alimony pendente lite to enable him to financially complete his divorce proceedings.

### **ORDER**

In accordance with the foregoing, the Family Court Hearing Officer's finding that the net monthly income of Mr. Goodbrod is \$4,454.99 is vacated. This case is remanded to the Family Court Hearing Officer to hold a hearing in order to recalculate the net monthly income of Mr. Goodbrod in accordance with the standards set forth in this Opinion insofar as including the inheritance from his mother's estate in those calculations.

The finding of the Family Court Hearing Officer that Mr. Goodbrod is not entitled is not entitled of alimony pendente lite is hereby affirmed.

The Family Court Hearing Officer shall schedule a hearing at the earliest possible date in order to address the recalculation of Mr. Goodbrod and the appropriate amount of child



support. Until such hearing is held Mr. Goodbrod shall continue to pay child support in the monthly amount of \$500.<sup>6</sup> At the final determination of this matter an appropriate credit will be given or arrearage assessed.

BY THE COURT:

William S. Kieser, Judge

cc: Court Administrator  
Gregory A. Stapp, Esquire  
William J. Miele, Esquire  
Domestic Relations  
Family Court  
Judges  
Jeffrey L. Wallitsch, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)  
#00-20,805

---

<sup>6</sup> In determining this interim amount of child support this Court has considered the following. The \$95,000 cash inheritance might reasonably be expected to earn a return of 6% per annum or \$5,700 per year, a total of \$475 per month. When added to Mr. Goodbrod's income from employment of \$1,873.65 he would appear to have an income for child support purposes of \$2,348.65. This is very close to the \$2,581.34 net monthly income of Mrs. Goodbrod. And together those incomes total \$4,929.99.

Because this is an estimate the Court will utilize a figure that the combined net monthly income of the parties is \$5,000, that each is responsible for 50% of the child support. Based upon the child support guidelines (Pa.R.C.P. 1910.16-3) the indicated child support amount would be \$927. Mr. Goodbrod's one-half share thereof would be \$463.50. Based upon the facts found by the Master, and keeping in mind the foregoing calculations or estimates, it would appear that until this matter is fully resolved neither Mr. Goodbrod nor the child will suffer a hardship by requiring Mr. Goodbrod to pay the sum of \$500 per month in child support from this date until the issues are finally resolved.